

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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RAYMOND PERACCHIO, :
 :
 Plaintiff, :
 : Civil Action No.
 v. : 3:06cv00082 (AWT)
 :
 LOWE'S HOME CENTERS, INC., :
 :
 Defendant. :
-----x

ENDORSEMENT ORDER

For the reasons set forth below, the plaintiff's Motion to Remand (Doc. No. 7) is hereby DENIED.

"A party invoking the jurisdiction of the federal court has the burden of proving that it appears to a reasonable probability that the claim is in excess of the statutory jurisdictional amount." Tongkook America, Inc. v. Shipton Sportwear Co., 14 F.3d 781, 784 (2d Cir. 1994). "The amount in controversy is determined at the time the action is commenced." Id.

In his Statement of Amount in Demand filed in state court, the plaintiff claimed damages in excess of \$15,000. (See Objection to Plaintiff's Motion for Remand (Doc. No. 9) Ex. A.) The Complaint filed in state court alleges:

As a direct and proximate result of the negligence and carelessness of the defendant Lowe's Home Center, Inc., the plaintiff Raymond Peracchio, sustained injuries which included, but were not limited to head trauma, abrasions and cuts about his legs and arms one of which became infected and had persistent failure of closure causing him great pain and discomfort.

(Compl. ¶ 6) (emphasis added);

As a direct and proximate result of the negligence and

carelessness of the defendant, Lowe's Home Center, Inc., the plaintiff Raymond Peracchio, suffered the aforesaid injuries, and said injuries or the effects thereof are or are likely to be permanent in nature.

(Id., at ¶ 7) (emphasis added);

As a further direct and proximate result of the negligence and carelessness of the defendant, Lowe's Home Center, Inc., the plaintiff Raymond Peracchio, was forced to expend considerable sums for medical care and treatment.

(Id., at ¶ 8) (emphasis added).

The allegations in the complaint establish a reasonable probability that the amount in controversy exceeds \$75,000. In support of his Motion to Remand, the plaintiff states that his claim is worth less than \$75,000 and that he never claimed damages in excess of \$75,000. This argument is unavailing because the amount in controversy is determined at the time the action is commenced, and it is not necessary that the plaintiff specifically claim damages in excess of \$75,000 so long as it appears to a reasonable probability that such is the amount in controversy at the time the action is commenced. Giving effect to those allegations in the Complaint the court has emphasized above, the court would have concluded at the time the action was commenced that it appeared to a reasonable probability that the amount in controversy exceeded \$75,000.

It is so ordered.

Dated this 11th day of March 2006 at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Judge